

DISCUSSION RESPONSE

Does transnational environmental crime and transnational fisheries crime exist in international law?

Yes, and it is thriving.

EVE DE CONING — 3 April, 2017



In her post, Professor [Elliott](#) argues for a 'levels-of-analysis' approach to understanding transnational environmental crime. I made a similar argument in a [Chapter](#) entitled 'Fisheries Crime' in Elliott and Schaedla's recent book, where I propose three different dimensions to the analysis of 'fisheries crime':

1. As a concept in law or the 'legal procedural perspective', where 'fisheries crime' is an umbrella term for a number of criminal offences,
2. As a criminological phenomenon or the 'socio-legal perspective', where 'fisheries crime' refers to the studies of social harm in fisheries; and
3. As a law enforcement approach or the 'policy perspective', where 'fisheries crime' refers to a compliance strategy known as 'using the full range of the law' to combat a particular harm.

In essence I argued that keeping these perspectives apart assists us in developing our own understanding of the legal/social/law enforcement concept known as 'fisheries crime'.

Keeping this distinction in mind, I tend to disagree with [Elliott](#), [Fajardo](#) and [Schatz](#) that transnational environmental (or fisheries) crime does not exist in international law ('the legal-procedural perspective'). I would argue that the international law of transnational environmental crime both exists and is thriving. However, I've come to realise that it may do so under a misleading name and without the kind of recognition that it is due, which may help explain why it is probably underutilized in environmental cases in practice.

To unpack what 'transnational environmental crime' is *in law*, it is essential to question *why* society may wish to regulate transnational environmental/fisheries crime at an international level in the first place. [Schatz](#) argues that the primary purpose of the concept of transnational fisheries crime is the nature of the activities involved, i.e., that *the severity and devastating impact of illegal fishing makes it worthy of heightened attention*, the latter presumably achieved by labelling it transnational crime. I can understand how this argument comes about but I am afraid it is slightly off target and thereby a source of confusion.

While working on both the UNODC 2011 report and establishing INTERPOL's fisheries crime unit, the problem we were addressing was the *law enforcement challenges* associated with the transnational nature of fisheries crime. The core question we asked ourselves was this: How can we facilitate cooperation of government agencies across borders in the many cases of transnational fisheries crime? If fisheries crime investigation is a puzzle where each piece is spread over multiple jurisdictions (as it frequently is), how can we help collect the pieces so the full picture of the criminal activity emerge? (Such as in the Vidal Armadores case).

Like the economic sector itself, fisheries crime is overwhelmingly transnational and, as Schatz rightfully points out, subject to a rather complex jurisdictional regime. This means that, lest we let the criminality continue undeterred, their detection, investigation and prosecution (all conducted by domestic government agencies) require cross border police cooperation (also all conducted by domestic government agencies). Thankfully there is in existence a rather extensive body of law internationally that assists law enforcement agencies, police and prosecutors with exactly this: The body of international law that facilitates cross border cooperation to detect, investigate and prosecute transnational crime and criminals. Unlike the more famous 'international criminal law', the international law pertaining to cross border cooperation to detect, investigate and prosecute transnational crime is about *international criminal procedure*, and less about substantive criminal law. As such it is perhaps less sexy, but nonetheless in vibrant and full operation 24 hours a day, every day of the year, through the many thousands of requests for mutual legal assistance, information exchange and extradition taking place daily between attorney generals, diplomatic missions, INTERPOL National Central Bureaus and other designated points of contact. These requests are carefully regulated in hundreds of multilateral and bilateral treaties and ad hoc agreements, stipulating how, when and on what grounds law enforcement officers, police and prosecutors can assist each other *inter-nationally* in criminal investigations that cross borders, i.e., where crimes or criminals are *transnational*. Some of these requests concern offences pertaining to environment harm or a breach of an environmental regulation, also known as 'transnational environmental crime'.

When countries criminalize and harmonize certain offences at an international level, for instance the offences of 'corruption', 'transnational organized crime' or 'human trafficking', the primary purpose is to *facilitate law enforcement cooperation* and not necessarily to elevate these to a special status under international law (although they may achieve both). The offences will in any case, as Schutz rightfully points out, still be tried, prosecuted and sentenced under domestic law. Similarly, the dual criminality rule in Article 18(9) of the United Nations Convention against Transnational Organized Crime (UNTOC) is a *discretionary* measure to enable states to decline requests for assistance on issues they disagree on (e.g., the criminalization of abortion or adultery) and the penal sanction set in the 'serious offence' definition in Article 2(b) of UNTOC is there to avoid burdening the coordination mechanism with minor offences (e.g., minor thefts). *Importantly, the definition does not exclude from its application transnational environmental/fisheries crime and many offences that constitute transnational environmental/fisheries crime already meet the definition.*

The objective of my Chapter in Elliott and Schaedla was to explain the concept of 'fisheries crime' from the perspective of different starting points of scientific inquiry (law, criminology and police science). It touches on the transnational and organized crime dimension of fisheries crime, but does not explore it fully using the three perspectives. However, my opinion is as follows: From a legal procedural perspective, in law (*de lege lata*) the international law of 'transnational [environmental/fisheries] crime' refers to the

international legal regime of mutual legal assistance between countries to facilitate (environmental) law enforcement cooperation. From the point of view of legal doctrine it belongs more in the realm of international criminal procedure than international criminal law. A more explanatory name in law would probably be 'international criminal procedure'.

This contribution is a response to earlier posts by [Lorraine Elliott](#), [Teresa Fajardo](#) and [Valentin Schatz](#).

Eve de Coning is a senior advisor at the Norwegian Ministry of Trade, Industry and Fisheries and the fisheries liaison to the National Crime Investigation Services – Norway (NCIS-N). She was the former head of INTERPOL's fisheries crime unit and is currently the Chair of the INTERPOL Fisheries Crime Working Group's Capacity Building and Awareness Raising project (CAPproject) as well as a member of the PescaDOLUS expert network. She is the author of a number of reports and academic publications on fisheries crime, including E de Coning 'Fisheries Crime' in L Elliott and Schaedla, W H (eds), 2016. A Handbook of Transnational Environmental Crime (Edgar Elgar: Cheltenham, UK); UNODC, 2011. Transnational Organized Crime in the Fisheries Sector (UNODC: Vienna, Austria) and ILO, 2013. Caught at Sea: Forced Labour and Trafficking in Fisheries (ILO: Geneva, Switzerland). In her day-to-day job she investigates transnational fisheries crime and facilitates cross border police cooperation on transnational fisheries crime with law enforcement and police agencies around the world in cooperation with INTERPOL and UNODC. All opinions expressed are the author's own and do not necessarily represent those of her former, present or future employers or others.

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